

NOT FOR PUBLICATION

MAY 16 2008

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIA TERESA GOMEZ-
HERNANDEZ, a.k.a. Teresa Hernandez;
et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-70251

Agency Nos. A95-300-966
A95-300-967
A95-300-968
A95-300-969

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 12, 2008**

Before: KOZINSKI, Chief Judge, THOMAS and CALLAHAN, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
order adopting and affirming an Immigration Judge's order denying petitioners'

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

application for cancellation of removal. We have reviewed petitioners' response to the court's February 12, 2008 order to show cause, respondent's motion for summary disposition and the record.

Although in their response to the order to show cause, lead petitioners Maria Teresa Gomez-Hernandez and Francisco Javier Hernandez-Sotelo claim that they are the parents of an adult permanent resident daughter, and argue that this court has jurisdiction over the question of whether their adult daughter is a qualifying relative, a review of the administrative record reveals that petitioners did not raise that issue before either the Immigration Judge or the BIA. We lack jurisdiction to consider unexhausted claims that could have been corrected by the Board of Immigration Appeals. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Moreover, none of the four petitioners presented any evidence, either before the Immigration Judge or on appeal before the BIA, that they had a qualifying relative for purposes of cancellation of removal as defined in 8 U.S.C. § 1229b(b)(1)(D). *See Molina-Estrada v. INS*, 293 F.3d 1089, 1093-94 (9th Cir. 2002). The BIA therefore correctly concluded that, as a matter of law, petitioners were ineligible for cancellation of removal. Accordingly, respondent's motion for summary disposition is granted because the questions raised by this petition for

review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

All other pending motions are denied as moot. The temporary stay of removal and voluntary departure confirmed by Ninth Circuit General Order 6.4(c) and *Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004), shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED, in part, DISMISSED, in part.